

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

MARY LAHREN, an individual;)	3:03-CV-0631-ECR-VPC
RICHARD SCHWEICKERT, an)	
individual; ANN DOUGHERTY,)	
an individual;)	
)	<u>ORDER</u>
)	
Plaintiffs,)	
)	
vs.)	
)	
UNIVERSITY AND COMMUNITY)	
COLLEGE SYSTEM OF NEVADA, a)	
political subdivision of)	
the State of Nevada;)	
ROBERT KARLIN, an individual;)	
JOHN LILLEY, an individual;)	
JANE LONG, an individual;)	
JOHN FREDERICK,)	
an individual; JAMES)	
TARANIK, an individual)	
)	
Defendant.)	
_____)	

I. Procedural Background

On August 30, 2004, Plaintiff Mary Lahren ("Plaintiff" or "Lahren") filed a Second Amended Complaint (#43) against Defendants University and Community System of Nevada, Robert Karlin, John Lilley, Jane Long, John Frederick, and James Taranik ("Defendant", "Defendants", "UCCSN", "Karlin", "Lilley", "Long", "Frederick" and "Taranik") alleging claims of sex discrimination and retaliation, an invalid release, and interference with prospective contractual

1 relations and economic advantage. On May 3, 2005, Defendants filed
2 a Motion for Summary Judgment (#50) as to the Claims Alleged by
3 Plaintiff Lahren. On August 28, 2005, Plaintiff responded to the
4 motion (#75) and Defendant filed a reply (#85) on August 30, 2005.
5 The motion (#50) is ripe, and we now rule on it.

6 7 **II. Statement of Facts**

8 Plaintiff Mary Lahren received her B.S. degree in Geology in
9 1983 and a Ph.D. in Geology in 1989 from the University of Nevada,
10 Reno ("the University"). Upon the completion of her degree, she
11 was employed by the University in its Department of Geological
12 Sciences as a Faculty Research Associate from 1989 to 1992, a
13 Research Assistant Professor from 1992 to 1995, and a Research
14 Associate Professor from 1995 until her termination pursuant to the
15 Settlement Agreement on July 30, 2002. On July 1, 2001, Plaintiff
16 reduced her hours from full time to part time due to a work
17 disability.

18 In November 2001, Plaintiff was told by Dr. Robert Karlin, the
19 head of the Geology Department, that there would be no money
20 available to pay her to teach a class in Spring 2002 and Dr. Karlin
21 did not assign Plaintiff any classes to teach during that semester.
22 After that time, Plaintiff had a very hard time getting funding for
23 her projects. The National Science Foundation ("NSF") turned down
24 a proposal submitted by her and Dr. Richard Schweickert.

25 On December 24, 2001, Plaintiff received a memorandum from
26 Mary Ann Keith, who was the Personnel Coordinator for the
27 Department of Geological Services, stating that since Plaintiff
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1 would not be teaching in the fall, and her grant funding had ended,
2 her funding from the Department would end on January 31, 2002.

3 On December 26, 2001, Plaintiff met with the University's
4 Human Resources Department regarding her application for long-term
5 disability benefits. She claimed that she could only complete very
6 few of her previous job duties but would be able to teach as long
7 as it was for less than an hour and would be able to publish on
8 material for which she did not have to do her own field research.

9 On January 2, 2002, Plaintiff's physician informed Human
10 Resources that she would not be able to return to her previous
11 work. On January 15, 2002, UCCSN Human Resources informed its
12 insurance carrier that Plaintiff would need temporary disability
13 benefits effective February 1, 2002.

14 At this time, Plaintiff also received Notice of Non-
15 Reappointment. On January 24, 2002, Plaintiff and co-Plaintiff Dr.
16 Schweickert met with Dr. Karlin to discuss teaching assignments.
17 According to Plaintiff, Dr. Karlin explained to the two of them
18 that Pat Cashman, another female professor, was going to teach
19 Geology 100 in the spring since Plaintiff taught the spring
20 before.¹ Plaintiff became irate with Dr. Karlin and insisted that
21 she be given a course to teach. Dr. Karlin suggested that he would

22
23 ¹Plaintiff relies on her own conclusory statement in her
24 declaration that accompanies her opposition to the motion for summary
25 judgment for the contention that she was the only person qualified to
26 teach this open course. Conclusory statements and those not based on
27 personal knowledge are to be disregarded in a motion for summary
28 judgment. Coca-Cola Co. v Overland, 692 F.2d 1250, 1255 (9th Cir.
1982); Delange v. Dutra Const. Co., Inc., 183 F.3d 916, 921 (9th Cir.
1999). Here, Plaintiff's statement is conclusory, and not based on
her personal knowledge of Pat Cashman's qualifications in comparison
to her own.

1 find her a one-credit course to teach. Plaintiff rebuffed this
2 suggestion.

3 After this time, Plaintiff met with Jane Long to complain
4 about the preferential treatment of Pat Cashman. She made no
5 mention of sexual harassment.

6 On January 30, 2002, Plaintiff received a memorandum from Jane
7 Long that Plaintiff would be on the payroll leave status until the
8 end of February 2002 but would have her employment terminated on
9 February 28, 2002.² Plaintiff then met with Long to discuss other
10 employment opportunities in the University in February 2002.

11 In March 2002, Plaintiff was funded in part from a grant and
12 in part from discretionary funds controlled by Dr. Schweikert.
13 Thereafter, Plaintiff did obtain the grant of \$25,000.00 and her
14 employment contract was extended through June 30, 2002.

15 On February 27, 2002, Plaintiff Lahren filed a Charge of
16 Discrimination with the EEOC and, on February 28, 2002, she filed a
17 complaint with the University's Affirmative Action Office. In her
18 complaints, Plaintiff alleged that she had been sexually harassed
19 by the Department of Geological Sciences Chairman, Dr. Karlin,
20 dating back to 1999 and as a result of her rebuffing his advances,
21 he had retaliated against her by not assigning her open classes.

22 The Charge of Discrimination filed with the EEOC was mediated
23 and agreements were reached on April 19, 2002 and May 14, 2002.
24 The agreement that was reached on April 19, 2002, was modified by
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26
27 ²Under UCCSN Code which governed Plaintiff's contract,
28 Plaintiff's employment was terminable with 30 days notice.

1 agreement of the parties and a final Settlement Agreement was
2 finally reached on May 14, 2002.

3 The Settlement Agreement was reached during the second
4 mediation session conducted on May 14, 2002, and became effective
5 on June 6, 2002. At the time, Plaintiff was given between May 14
6 and June 6 to think over the agreement and to decide whether it
7 would become binding.³ The Settlement Agreement included two
8 documents: an EEOC form agreement with boilerplate terms and a
9 Settlement of All Claims drawn up by the University. The
10 Settlement of All Claims included the following provisions:

11 1. In exchange for satisfactory fulfillment by
12 Respondent of the promises by Respondent officials in
13 this agreement, Charging Party agrees not to institute a
lawsuit under Title VII of the Civil Rights Act as
amended...

14 6. The parties agree that this Agreement may be
15 specifically enforced in court and may be used as
16 evidence in a subsequent proceeding in which any of the
parties allege a breach of this Agreement...

17 Pursuant to the final Settlement Agreement, Plaintiff Lahren
18 received \$60,000 in damages including attorney's fees, and agreed
19 to remain off campus until July 31, 2002.

20 In the final agreement, Plaintiff agreed that she would not
21 institute further actions against Defendant UCCSN for any claims

22 ³Plaintiff claims that the mediation resulted in an involuntary
23 agreement because she was badgered, threatened, intimidated and told
24 that she would be terminated in any case regardless of whether she
25 signed the agreement or not. Plaintiff claims that she was deprived
26 of food and sleep and was not thinking clearly. However, Plaintiff's
27 tales of involuntariness fail to prove the agreement was involuntary
as she had 23 days to think the agreement over. During those 23 days,
Plaintiff had several meeting with her attorney that did not result
in her changing her mind. Plaintiff failed to revoke her agreement
during those 23 days and was therefore bound by the terms of the
settlement.

1 arising out of her employment with UCCSN. The agreement became
2 final on June 6, 2002.

3 In December 2002, Plaintiff engaged a concern known as
4 Documented Reference Check to investigate to determine whether Dr.
5 Karlin was "blackballing" her. Documented Reference Check finally
6 made contact with Dr. Karlin on January 15, 2003, after repeated
7 attempts to reach him and recorded a conversation in which Dr.
8 Karlin attempted to evade questions about Plaintiff Lahren and,
9 when asked about her, told the caller to call the Legal Department
10 and also said you can contact the Affirmative Action Department.
11 Plaintiff had engaged the services of Documented Reference Check
12 because she believed that her application to Truckee Community
13 College was thwarted by Dr. Karlin because she did not receive a
14 call-back for an interview from the College.⁴ Dr. Karlin was not a
15 party to the Settlement Agreement.

16 Plaintiff also alleges that after the Settlement Agreement was
17 signed, Dr. Karlin retaliated against her by telling other faculty
18 members that she had been dismissed for "double dipping." She
19 claims that as a result of Dr. Karlin's blackballing her and
20 spreading rumors about her status at the University, he interfered
21 with her prospective contractual relations.

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24 ⁴Plaintiff uses her own declaration to establish that the person
25 who was hired for the position at Truckee Community College was not
26 qualified for the position. Self-serving statements not based in any
27 factual evidence will be disregarded in a motion for summary
judgement. Plaintiff has failed to show that actual statements were
made and relies on a very strong inference based on no factual
information to form the basis for this claim.

1 Plaintiff also alleged that, after the Settlement Agreement
2 was signed, Dean James Taranik (who was appointed after the
3 Settlement Agreement was signed) retaliated against Plaintiff and
4 breached the Settlement Agreement by disclosing to graduate student
5 Bryan Law that (1) Plaintiff's case had been settled; (2) Dr.
6 Karlin had been wrongly accused; (3) that she had obtained her
7 employment in violation of University policy; (4) that she had a
8 long history of making complaints against employers for sexual
9 harassment; (5) that Dr. Karlin was the principal investigator on a
10 research project and (6) that she was unable to secure funding.

11 On December 18, 2003, more than a year after the agreement
12 became final, Plaintiff Lahren filed this action alleging, in part,
13 that her execution of the Settlement Agreement was not voluntary,
14 deliberate and informed.

15 16 **II. Discussion**

17 **A. Summary Judgment Standard**

18 Summary judgment allows courts to avoid unnecessary
19 trials where no material factual dispute exists. Northwest
20 Motorcycle Ass'n v. U.S. Department of Agriculture, 18 F.3d 1468,
21 1471 (9th Cir. 1994). The court must view the evidence and the
22 inferences arising therefrom in the light most favorable to the
23 nonmoving party, Bagdadi v. Nazar, 84 F.3d 1194, 1197 (9th Cir.
24 1996), and should award summary judgment where no genuine issues of
25 material fact remain in dispute and the moving party is entitled to
26 judgment as a matter of law. Fed. R. Civ. P. 56(c). Judgment as a
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1 matter of law is appropriate where there is no legally sufficient
2 evidentiary basis for a reasonable jury to find for the nonmoving
3 party. Fed. R. Civ. P. 50(a). Where reasonable minds could differ
4 on the material facts at issue, however, summary judgment should
5 not be granted. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th
6 Cir. 1995), cert. denied, 116 S.Ct. 1261 (1996).

7 The moving party bears the burden of informing the court
8 of the basis for its motion, together with evidence demonstrating
9 the absence of any genuine issue of material fact. Celotex Corp.
10 v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has
11 met its burden, the party opposing the motion may not rest upon
12 mere allegations or denials in the pleadings, but must set forth
13 specific facts showing that there exists a genuine issue for trial.
14 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).
15 Although the parties may submit evidence in an inadmissible form--
16 namely, depositions, admissions, interrogatory answers, and
17 affidavits--only evidence which might be admissible at trial may be
18 considered by a trial court in ruling on a motion for summary
19 judgment. Fed. R. Civ. P. 56(c); Beyene v. Coleman Security
20 Services, Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

21 In deciding whether to grant summary judgment, a court must
22 take three necessary steps: (1) it must determine whether a fact is
23 material; (2) it must determine whether there exists a genuine
24 issue for the trier of fact, as determined by the documents
25 submitted to the court; and (3) it must consider that evidence in
26 light of the appropriate standard of proof. Anderson, 477 U.S. at
27 248. Summary Judgement is not proper if material factual issues
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1 exist for trial. B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260,
2 1264 (9th Cir. 1999). "As to materiality, only disputes over facts
3 that might affect the outcome of the suit under the governing law
4 will properly preclude the entry of summary judgment." Anderson,
5 477 U.S. at 248. Disputes over irrelevant or unnecessary facts
6 should not be considered. Id. Where there is a complete failure
7 of proof on an essential element of the nonmoving party's case, all
8 other facts become immaterial, and the moving party is entitled to
9 judgment as a matter of law. Celotex, 477 U.S. at 323. Summary
10 judgment is not a disfavored procedural shortcut, but rather an
11 integral part of the federal rules as a whole. Id.

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13 **B. Retaliation**

14 Plaintiff's first claim is that Defendants retaliated against
15 her for filing a claim with the EEOC after the Settlement Agreement
16 was signed on May 14, 2002. This retaliation claim is based on six
17 actions by the Defendants: (1) within six months of the Settlement
18 Agreement, Dr. Karlin told other faculty members that Plaintiff had
19 been "double-dipping"; (2) on January 15, 2003, Dr. Karlin referred
20 an employee of Documented Reference Check to the Legal Department
21 or the Affirmative Action Department when the investigator asked
22 about Plaintiff; (3) Plaintiff applied for employment elsewhere and
23 was denied; (4) Dean Taranik disclosed to Bryan Law that
24 Plaintiff's case had been settled and that things had sorted out
25 and everyone was happy (5) Dean Taranik told Law that Dr. Karlin
26 was wrongly accused of sexual harassment; (6) Dean Taranik told Law
27 that Plaintiff had secured work in violation of University policy

1 prohibiting post-doctoral work by students; (7) Dean Taranik told
2 Law that Plaintiff delayed her sexual harassment claim filing; (8)
3 Dean Taranik told Law that Dr. Karlin was the principal
4 investigator on a research project and was primarily responsible
5 for obtaining funding; and (9) Dean Taranik told Law that Plaintiff
6 was not able to bring in necessary funding.

7 In order to establish a claim for retaliation under Title VII,
8 Plaintiff must show: (1) prior engagement in a protected activity;
9 (2) a subsequent adverse employment action; and (3) a causal link
10 between the two. Moss v. England, 2005 U.S. App. LEXIS 10872, at
11 *5 (9th Cir. 2005).

12 Since Plaintiff has demonstrated her prior engagement in a
13 protected activity which resulted in a mediated settlement, our
14 focus should be on whether Defendants' actions constituted adverse
15 employment actions and whether there is a causal connection between
16 the protected activity and Defendants' actions.

18 **1. Double-Dipping**

19 Plaintiff claims that Dr. Karlin told other faculty members
20 that Plaintiff had been dismissed for "double dipping."
21 Plaintiff's evidence comes from a memorandum prepared by Dr. James
22 Carr in which he wrote that Dr. Watters had told him Dr. Karlin had
23 said Plaintiff was dismissed for "double dipping."

24 A motion for summary judgment can only be based on evidence
25 which can be presented at trial. Here, this evidence is hearsay
26 and will not be considered in deciding a motion for summary
27 judgment. See Fed. R. Ev. § 801. This statement is double
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1 hearsay: Dr. Karlin to Dr. Watters, Dr. Watters to Dr. Carr, and
2 Dr. Carr's memorandum. Dr. Carr's memorandum is not a record made
3 in the course of regularly conducted business activity (803(6),
4 does not express his then existing state of mind (803(3), and
5 Plaintiff has not demonstrated that the witness would not remember
6 the statement if called to testify and therefore the statement is
7 not a recorded recollection. (803(5)).

8 Dr. Watters testified that he never heard Dr. Karlin use the
9 term "double dipping." Therefore, Plaintiff's claim as to this
10 evidence will not be considered in evaluating whether Defendants
11 retaliated against Plaintiff.

12 13 **2. Documented Reference Check**

14 The question the Documented Reference Check call presents is
15 whether referring the caller to the Legal Department or Affirmative
16 Action Department did indeed constitute "adverse employment
17 action."

18 The Ninth Circuit has held that giving a negative performance
19 evaluation to a prospective employer can constitute adverse
20 employment action. Brooks v. City of San Mateo, 229 F.3d 917, 928-
21 29 (9th Cir. 2000). The court in Brooks recognized that there is a
22 fine line drawn between paralyzing employer action and reprimanding
23 employers for taking adverse action against complaining employees.
24 In defining what that line was, the court held:

25 "Among those employment decisions that constitute
26 adverse employment action are termination, dissemination
27 of a negative employment reference, issuance of an
28 undeserved negative performance review and refusal to
consider for promotion. By contrast, we have held that

1 declining to hold a job open for an employee and
2 badmouthing an employee outside the job reference
context do not constitute adverse employment actions."

3 Brooks, 229 F.3d 928-29 (internal citations omitted).

4 Whether referring a prospective employer to the Legal
5 Department or the Affirmative Action Department constitutes a
6 negative employment reference along the lines of an "adverse
7 employment action" is an issue of material fact that cannot be
8 resolved as a matter of law. While Plaintiff Lahren's evidence is
9 by no means very strong, it is sufficient to survive summary
10 judgment on this issue.

11 12 **3. Plaintiff Lahren's Search for Employment**

13 Plaintiff's claim that she has been unable to obtain
14 employment and that this has been caused by the University is based
15 on conclusory allegations and on facts not within her personal
16 knowledge. Therefore, these claims are not based on Plaintiff's
17 personal knowledge that Defendants caused her not to gain
18 employment with prospective employers. She has simply relied on
19 coincidences to justify her claim.

20 21 **4. Dean Taranik's Statements**

22 Dean Taranik's statements were made to a graduate student of
23 the University's Geology Department-not to an outside employer
24 seeking to employ Plaintiff. Because the Ninth Circuit in Brooks
25 held that bad-mouthing outside the job reference context does *not*
26 constitute adverse employment action, here, Dean Taranik's
27 statements cannot be considered adverse employment action. Dean
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1 Taranik made the statements to a student and not to a prospective
2 employer. Bryan Law was not in a position to employ Plaintiff and
3 his being told details of the settlement and of Plaintiff's
4 employment was highly unlikely to have an impact on her future
5 employment.

6 However, there remains an issue of material fact as to whether
7 Dr. Karlin's referring the Documented Reference Check to the
8 Affirmative Action office or the Legal Department constitutes
9 adverse employment action.

10 The Ninth Circuit has held that a causal connection can be
11 established by temporal proximity. Yartzoff v. Thomas, 809 F.2d
12 1371, 1376 (9th Cir. 1987) ("Causation sufficient to establish the
13 third element of a prima facie case may be inferred from
14 circumstantial evidence, such as the employer's knowledge that the
15 plaintiff engaged in protected activities and the proximity in time
16 between the protected action and the allegedly retaliatory
17 employment decision."). Here, Plaintiff has shown that there was
18 but six months between the time when the mediation settlement took
19 place and the time of Dr. Karlin's allegedly adverse employment
20 actions against her.

21 After Plaintiff establishes a prima facie case of retaliation,
22 the burden of production then shifts to Defendants to articulate a
23 legitimate, non-retaliatory explanation for the adverse action.
24 Yartzoff, 809 F.2d at 1377 (internal citations omitted). Here,
25 Defendants have offered no legitimate non-discriminatory reasons
26 for Dr. Karlin's actions. They have admitted that Dr. Karlin was
27 "blind-sided" by the call and that Dr. Karlin should have referred

1 the caller to the Personnel Department. For these reasons,
2 Plaintiff's claim of retaliation survives this motion for summary
3 judgment and Defendants' motion for summary judgment as to
4 retaliation will be denied.

5
6 **C. Motion for Summary Judgment as to Dr. Karlin's Actions between**
7 **1999-2002**

8 Defendants have also moved for summary judgement on the claims
9 based on the sexual harassment that was the subject of the EEOC
10 mediation and Settlement Agreement in 2002. Defendants claim that
11 since Plaintiff waived all claims she may have had up to the
12 effective date of the Settlement Agreement (June 6, 2002) she
13 should be barred from raising those claims here again.⁵

14 We agree that if the release is valid, Plaintiff's claims as
15 to actions between 1999-2002 would be barred as waived under the
16 release.

17 Whether a release is *valid* and indeed does release all claims
18 under Title VII, 42 U.S.C. §2000e is governed by federal law.
19 Salmeron v. United States, 724 F.2d 1357, 1361 (9th Cir. 1983).⁶

20 "Creation of a federal rule rather than absorption of a state rule

21
22 ⁵Plaintiff claims that Defendant should not be able to raise the
23 argument of validity of the release here in summary judgment.
24 Plaintiff's claims are without merit as (1) Plaintiff moved for
invalidity of the release based on state law grounds in a prior motion
and (2) claimed invalidity of the release in her complaint.

25 ⁶We note that the claim of validity under Title VII is different
26 from the inquiry of whether the release was void under state law.
27 Plaintiff's previous motion for summary judgment on validity of the
release was based on the proposition that the release was void under
state contract law and not whether the release was valid under Title
28 VII.

1 is appropriate where...the rights of the litigants and the
2 operative legal policies derive from a federal source." Jones v.
3 Taber, 648 F.2d 1201, 1203 (9th Cir. 1981).

4 The inquiry into the validity of the release under Title VII
5 is two step. First we must determine what claims Plaintiff waived
6 under the release and second we must determine whether the release
7 was "voluntary, deliberate, and informed." Stroman v. West Coast
8 Grocery Co., 884 F.2d 458, 462 (9th Cir. 1989).

9 As to the first step of the inquiry, we find that Plaintiff
10 surrendered all of her claims under Title VII as of the time the
11 final Settlement Agreement became effective. ("Charging Party
12 agrees not to institute a lawsuit under Title VII of the Civil
13 Rights Act..."). Plaintiff was given \$50,000 and \$10,000 in
14 attorney's fees for waiving her rights to sue for those Title VII
15 claims and other claims arising out of her employment with
16 Defendant. Thus, we find that the release waived all of
17 Plaintiff's rights under Title VII as they existed at that time.

18 As to the second step, we must examine the totality of the
19 circumstances to determine whether the release was valid.
20 Salmeron, 724 F.2d at 523. Of primary importance to the Ninth
21 Circuit is the clarity and lack of ambiguity of the agreement, the
22 plaintiff's education and business experience, the presence of a
23 non-coercive atmosphere for the execution of the release, and
24 whether the employee had the benefit of legal counsel. Stroman,
25 884 F.2d at 462.

26 Here there is no issue of material fact as to whether the
27 release was valid.

1 In this case, the agreement between the University and
2 Plaintiff was clear and unambiguous. If Plaintiff agreed to waive
3 all her rights under Title VII for actions committed by the
4 University and its employees up until that date, Plaintiff would
5 receive \$50,000 and \$10,000 for her attorney. No reasonable person
6 could have been misled by the terms of the agreement. Harry's
7 Cocktail Lounge v. McMahon, 1996 U.S. App. LEXIS 30876, at *10 (9th
8 Cir. 1996).

9 Plaintiff makes the claim that she was put under economic
10 duress during negotiations to the point where she felt that she had
11 no option but to agree to the terms of the settlement. She
12 provides several reasons for this claim: (1) the University's
13 determination on her claim was misrepresented; (2) she was told
14 that sexual harassment claims were hard to litigate; (3) she was
15 informed that the April 19, 2002 settlement would go into effect if
16 she did not sign the May 14, 2002 settlement agreement and (4) the
17 University had already decided to terminate her and if she did not
18 sign, she would be forced to work with Dr. Karlin.

19 To demonstrate a case of economic duress, Plaintiff must show
20 wrongful acts or threats, financial distress caused by those acts,
21 and absence of any reasonable alternative to terms presented by the
22 wrongdoer. Gruver v. Midas Intern. Corp., 925 F.2d 280, 282 (9th
23 Cir. 1991). Here, we find that there was no economic duress present
24 and the coercive atmosphere complained of was mitigated by the fact
25 that Plaintiff had 23 days to void the agreement. Indeed, many of
26 the actions of the University and mediator, we find, are not
27 uncommon in many mediations, where mediators are attempting to
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1 obtain a settlement and employ many tactics to try and get the
2 parties to come to an agreement.

3 First, although the University may have misled Plaintiff as to
4 its findings, Plaintiff admits that her lawyer during the
5 meditations informed her that her case was good and that she might
6 win some money from bringing a claim. The University's
7 representations were their own determination on the claim and
8 cannot be said to have created an atmosphere of coercion given
9 Plaintiff's own estimations about her suit. The University's
10 findings, in addition, are their own determination and their own
11 opinions and would have little, if any, effect on later
12 determinations by the EEOC or a jury as to Plaintiff's claims.

13 Second, whether or not sexual harassment claims are hard to
14 litigate and whether EEOC letters for right to sue are difficult to
15 obtain has no bearing on Plaintiff's own decision as to whether or
16 not to pursue or settle her claim. Expressions of opinion are
17 generally not actionable. Vaefaga v. Oregon Steel Mills, 1995 U.S.
18 App. LEXIS 34930, at *6 (9th Cir. 1995). In the first place,
19 Plaintiff had to weigh her decision to bring the claim against
20 these kinds of factors. Given that she was advised by an
21 experienced attorney as to whether or not her claim had merit, we
22 find this evidence does not support a claim that an atmosphere of
23 coercion existed.

24 Third, Plaintiff admits in her deposition that she knew the
25 April 19, 2002, mediation settlement agreement was modified by the
26 May 14, 2002, final Settlement Agreement. She cannot now claim in
27 her declaration that she did not understand whether the April 19,
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1 2002, agreement would go into effect. Oliver v. Keller, 289 F.3d
2 623, 629 (9th Cir. 2002) ("Appellant cannot generate an issue of
3 material fact by providing contradictory statements."). In
4 addition, she states that she did have the option to revoke and
5 describes what would have happened in those circumstances. Whether
6 the April 19, 2002, settlement was going to go into effect was
7 never cited as a real possibility that she considered when deciding
8 whether or not to execute the May 14, 2002, agreement.

9 Last, whether Plaintiff would have to work with Dr. Karlin or
10 not is a factor independent of the settlement. If Plaintiff had
11 decided to continue to work and pursue the claim through
12 litigation, she would have been working with Dr. Karlin during that
13 time. She would have had remedies through retaliation claims under
14 Title VII if he decided to "get back" at her for filing her
15 complaint. Therefore, the decision as to whether or not to sign
16 the agreement did depend on her working with Dr. Karlin and was not
17 a source of economic duress.

18 Whether or not the University decided to terminate her was not
19 known to Plaintiff at the time she signed the agreement and was
20 only known to her months after. This fact therefore cannot serve
21 as a basis of duress.

22 We find also the fact that Plaintiff had twenty-three days to
23 think over whether or not to cancel the settlement further proves
24 that there was an absence of coercion and duress. During this time
25 Plaintiff could have made further investigations and indeed had her
26 attorney inquire into the further details of the agreement.

1 Plaintiff's claims that she was hypoglycemic do not support
2 the invalidity of the release. Plaintiff was given twenty three
3 days to think over the settlement agreement and decide whether or
4 not she should revoke it. There is no claim that during this time
5 she was ill. Indeed, during this time, Plaintiff and her attorney
6 were actively reviewing their options. Plaintiff met with her
7 attorney and her attorney sent questions to the University
8 regarding the scope of the agreement. This correspondence shows
9 Plaintiff actively thinking over the agreement and whether the
10 terms were acceptable to her.

11 The other factors weigh against Plaintiff-Plaintiff is highly
12 educated and although not a legal professional, she is still a very
13 intelligent professor with a Ph.D. and competent to understand the
14 full nature of the events surrounding the mediation and agreement.
15 In addition, Plaintiff was represented during the mediation by
16 competent counsel.

17 For these reasons, we find that the agreement was valid and
18 that Plaintiff cannot assert its invalidity in order to resurrect
19 claims that she has waived by way of the Settlement Agreement.

20 **D. Motion for Summary Judgment as to Dr. Karlin's Actions before**
21 **December 18, 2001**

22 Defendant Karlin has moved for summary judgment for claims
23 based on actions that took place before December 18, 2001, as those
24 claims are barred by the statute of limitations.

25 Section 1983 which allows suits against state officials does
26 not have an applicable statute of limitations. The Supreme Court
27 has held that in the absence of a statute of limitations, courts

1 should simply borrow the statute of limitations in the applicable
2 state. Wilson v. Garcia, 471 U.S. 261, 276 (1985). Here, Nevada's
3 statute of limitations is two years. NRS 11.190(4)(e).

4 Because over two years had passed before Plaintiff filed this
5 action, Plaintiff's 1983 action against Dr. Karlin for events
6 transpiring before 2001 will be dismissed.

7
8 **E. Motion for Summary Judgment by Dr. Karlin as to Dr. Karlin's**
9 **Actions after May 14, 2002**

10 Defendant Karlin has also moved for summary judgment as to the
11 retaliation claims alleging that they cannot be the subject of a
12 section 1983 claim in this case.

13 A section 1983 case has two elements: (1) the conduct
14 complained of must have been under the color of state law, and (2)
15 the conduct must have subjected Plaintiff to deprivation of
16 constitutional rights. Ramirez v. Kroonen, 44 Fed. Appx. 212, 215
17 (9th Cir. 2002).

18 Recently, the District of Oregon concluded that "even if the
19 claims under Title VII were viable, the plaintiff 'probably could
20 not have pursued section 1983 claims based on the same
21 discriminatory and retaliatory acts." Friday v. City of Portland,
22 2005 WL 189717, at *2 (D. Or. 2005). Although other circuits have
23 ruled on this issue and agreed with the District of Oregon, the
24 Ninth Circuit has yet to address this issue.

25 Here, Plaintiff alleges that her right to equal protection was
26 violated by Defendant Karlin. However, Plaintiff provides no
27 evidence that her treatment by Dr. Karlin after May 14, 2002, was
28

1 due to her sex. Because Plaintiff has provided no evidence that
2 Dr. Karlin deprived her of a constitutional right, Defendants'
3 motion for summary judgment as to Plaintiff's 1983 claims will be
4 granted.

5
6 **F. Intentional Interference with Prospective Contractual Relations**

7 Plaintiff also claims that Dr. Karlin interfered with an
8 existing and prospective contractual relations because he told
9 Document Reference Check that they should contact the Affirmative
10 Action Department or Legal Department.

11 To establish the tort of interference with prospective
12 business advantage, Plaintiff must establish: "(1) a prospective
13 contractual relationship between the plaintiff and a third party;
14 (2) the defendant's knowledge of this prospective contractual
15 relationship; (3) the intent to harm the plaintiff by preventing
16 the relationship; (4) the absence of privilege or justification by
17 the defendant; and (5) actual harm to the plaintiff has a result of
18 the defendant's conduct." Consolidated Generator-Nevada v. Cummins
19 Engine Company, Inc., 114 Nev. 1304, 1311 (1998).

20 As described above, Plaintiff's claim that Dr. Karlin
21 interfered with her being hired by Truckee Community College is
22 without merit. Plaintiff presents her own opinions as to the
23 candidates and can point to no evidence that Dr. Karlin was
24 actually contacted by Truckee Community College or that Truckee
25 Community College had intent to enter into a contract with her.
26 She can only show that she applied to the College and that she
27 believed that she was more qualified than the person that was
28

1 hired. Such subjective beliefs are not the basis for the creation
2 of an issue of material fact and Defendant's motion for summary
3 judgment on interference with existing and prospective contractual
4 relations will be granted.

5 **IT IS HEREBY ORDERED** that Defendants' Motion for Summary
6 Judgment (#50) with respect to the claims of Plaintiff Lahren is
7 **GRANTED** as to all claims except the claim for retaliation based on
8 the alleged negative job reference.

9
10 This 22nd day of December, 2005.

11 
12 UNITED STATES DISTRICT JUDGE